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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

EDGE CAPTURE L.L.C., and EDGE SPECIALISTS, L.L.C.,)
Plaintiffs,) Civil Action No. 09 CV 1521
v.	JURY TRIAL DEMANDED
BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., UBS AG, UBS FINANCIAL SERVICES INC., UBS SECURITIES LLC, WOLVERINE TRADING, L.L.C., AND WOLVERINE EXECUTION SERVICES, L.L.C.,	 Judge Charles R. Norgle, Sr. Magistrate Judge Denlow
Defendants.)

NOTICE REGARDING THE BARCLAYS AND UBS DEFENDANTS' INEQUITABLE CONDUCT COUNTERCLAIMS AND DEFENSES

Defendants Barclays Bank PLC, Barclays Capital Inc., UBS AG, UBS Financial Services Inc., and UBS Securities LLC (collectively, "Defendants") hereby submit this notice regarding their inequitable conduct defenses in response to the Court's August 30, 2011 Order (D.E. 220).

On March 23, 2011, Defendants filed their Answers, Affirmative, Defenses, and Counterclaims to Edge Capture L.L.C.'s and Edge Specialists, L.L.C.'s (collectively, "Edge") Amended Complaint. D.E. 148-152. Defendants' Answers denied Edge's patent infringement claims and asserted, *inter alia*, affirmative defenses and counterclaims based on the patent applicants' inequitable conduct committed before the United States Patent and Trademark Office. *See id.* at ¶¶ 142-53. On May 4, 2011, Edge moved to dismiss some of Defendants' counterclaims, including those based on inequitable conduct. D.E. 169. On August 30, 2011, the Court granted-in-part and denied-in-part Edge's motion to dismiss, allowing Defendants'

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state law counterclaims to proceed, but finding that Defendants' inequitable conduct allegations

did not meet Rule 9(b)'s heightened pleading standard. D.E. 220. Therefore, the Court

dismissed Defendants' inequitable conduct counterclaims without prejudice and granted

Defendants leave to amend their pleadings on or before September 16, 2011. See id. at 27.

Defendants believe that additional factual bases supporting their inequitable conduct

defenses will be developed through discovery, and, thus, reserve their rights to amend their

inequitable conduct defenses after obtaining this discovery. The parties have agreed that,

pursuant to local practice in patent cases, "[d]iscovery is permitted with respect to . . . defenses

of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to

support these claims or defenses is in whole or in part in the hands of another party." D.E. 167 at

2-3. Thus, to the extent that Defendants discover additional factual bases supporting their

inequitable conduct defenses, they will seek leave to amend their pleadings at the appropriate

time and in accordance with the Federal Rules. See Fed. R. Civ. P. 15(a)(2) (After the time to

amend a pleading as a matter of course expires, "a party may amend its pleading only with the

opposing party's written consent or the court's leave. The court should freely give leave when

justice so requires.").

Respectfully submitted,

Dated: September 16, 2011

By: /s/ Jeffrey G. Randall

Jeffrey G. Randall (admitted pro hac vice)

Jeffrey D. Comeau (admitted pro hac vice)

PAUL HASTINGS LLP

1117 S. California Avenue

Palo Alto, CA 94304-1106

Tel: (650) 320-1800

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Allan M. Soobert (admitted *pro hac vice*) PAUL HASTINGS LLP 875 15th Street, N.W. Washington, DC 20005 Tel: (202) 551-1700

Emily Newhouse Dillingham PAUL HASTINGS LLP 191 N. Wacker Drive Chicago, IL 60606 Tel: (312) 499 6292

Attorneys for Defendants Barclays Bank PLC, Barclays Capital Inc., UBS AG, UBS Financial Services Inc., and UBS Securities LLC **CERTIFICATE OF SERVICE**

I, Jeffrey G. Randall, hereby certify that on September 16, 2011, I caused a true and

correct copy of the foregoing NOTICE REGARDING THE BARCLAYS AND UBS

DEFENDANTS' INEQUITABLE CONDUCT COUNTERCLAIMS AND DEFENSES to be

served by electronic filing using the CM/ECF system upon:

Sang A. Young Brodie

sybrodie@rkmc.com, mjlarson@rkmc.com, mmtacheny@rkmc.com

Patrick G. Burns

pburns@gbclaw.net, docket@gbclaw.net

Munir R. Meghjee

mrmeghjee@rkmc.com, ljlewis@rkmc.com, jkcornelius@rkmc.com

Ronald Schutz

rjschutz@rkmc.com

Robert W. Unikel

Robert.unikel@kayescholer.com; maondil@kayescholer.com

Deanna Keysor

deanna.keysor@kayescholer.com

Michelle K. Marek

michelle.marek@kayescholer.com

Jeana R. Lervick

jlervick@gbclaw.net; docket@gbclaw.net

Gavin James OKeefe

gokeefe@gbclaw.net

Dated: September 16, 2011 By: /s/ Jeffrey G. Randall

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